A

**MOHAMAD ABDUL RAHMAN**

**v.**

**PP**

B

COURT OF APPEAL, PUTRAJAYA
AZAHAR MOHAMED JCA
BALIA YUSOF WAHI JCA
MOHD ZAWAWI SALLEH JCA
[CRIMINAL APPEAL NO: T-05-336-12-2011]

C

26 AUGUST 2013

***CRIMINAL LAW:*** *Dangerous Drugs Act 1952 - Section 39B(1) - Trafficking - Recovery of drugs from drawer of table in room - Possession - Whether proven - Whether room readily accessible to others - Whether*

D

*accused had custody and control of drawer - Whether drawer fitted definition "anything whatsoever containing" under s. 37(d) Dangerous Drugs Act 1952 - Whether accused had knowledge of nature of drugs*

***CRIMINAL PROCEDURE:*** *Sentence - Appeal against conviction and sentence - Trafficking in dangerous drugs - Accused sentenced to death -*

E

*Whether trial judge appraised evidence on possibility of drugs belonging to or had been placed by others - Failure by trial judge to judicially consider evidence - Drawing of unfavourable inference prejudicial to accused - Whether warranted appellate intervention - Whether conviction safe -*

F

*Dangerous Drugs Act 1952, ss. 37(d) & 39B(1)*

The police team, upon receiving information regarding a drug trafficking activity, went to the premise where the appellant was staying and recovered drugs from the drawer of the writing table in the back room of the house. The drugs were subsequently

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confirmed to be 1,317.7g of cannabis. The appellant was therefore charged for trafficking in dangerous drugs under s. 39B(1) of the Dangerous Drugs Act 1952 ('DDA'). The learned trial judge found that the prosecution had established possession with the invocation of the presumption under s. 37(d) of the DDA by

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drawing an inference that the appellant had the custody and control of the drawer containing the drugs. Relying on the definition of trafficking under s. 2 of the DDA, the learned judge went on to find that the appellant was keeping the drugs, hence trafficking in the same within the meaning of s. 2 of the DDA.

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The appellant was thus convicted and sentenced to death. Hence,

the appellant appealed. The appellant submitted that the learned trial judge did not make any positive finding of possession and stated that the room was readily accessible and was not within the exclusive domain of the appellant. It was also submitted that SP10, who was arrested and was serving sentence of imprisonment for possession of cannabis, had come to the house and used the room the night before the police raided the house.

**Held (acquitting and discharging the appellant; setting aside conviction and sentence of the High Court)**
**Per Balia Yusof Wahi JCA delivering the judgment of the court:**

**(1)** A judge who adjudicated upon a dispute must assess and weigh the evidence before him and must also critically examine the same. Any decision arrived at in the absence of judicial appreciation of evidence is liable to judicial correction (*Boonsoom Boonyanit v. Adorna Properties Sdn Bhd*, refd); (*Lee Ing Chin & Ors v. Gan Yook Chin & Anor*, refd). (para 18)

**(2)** On the facts, the learned trial judge had failed to evaluate and appraise the evidence on the possibility of the drugs belonging to or had been placed there by others. This was a crucial part of the appellant's defence which was not judicially and adequately considered by the learned trial judge and was thus a serious misdirection, warranting appellate intervention. The evidence that the room where the drugs were found was accessible to others and that there was no exclusive custody and control of the drawer by the appellant was material. Failure to consider that material evidence made the error of law beyond argument. (paras 19 & 20)

**(3)** The learned trial judge had also made an inference that the drugs, for which SP10 was charged for being in possession, were taken from the house where the appellant was arrested. There was absolutely no evidence to justify the inference drawn by the learned trial judge. The unfavourable inference was prejudicial to the appellant and merited appellate intervention. (para 27)

**(4)** Although the learned trial judge had rightly found that a drawer containing the impugned drugs fitted the definition of "anything whatsoever containing" under s. 37(d) of the DDA, the court could not agree on its invocation against the

A appellant for the reason that the appellant could not, on the evidence available, be in exclusive control and custody of the drawer. (para 30)

**(5)** It is trite that there cannot be possession without knowledge. B In the instant appeal, possession was presumed under s. 37(d) of the DDA. The appellant was deemed to have been in possession of the drugs and shall until the contrary is proved, be deemed to have known the nature of the drugs. Hence, there was no merit in the submission that the element of C knowledge was lacking in this appeal. There was also nothing inherently wrong on the part of the learned trial judge in dealing with the issue of burden of proof placed on the appellant. (paras 31 & 33)

D **(6)** It was unsafe to convict the appellant on the evidence proferred and the manner in which the learned trial judge had dealt with the evidence. (para 34)

***Bahasa Malaysia*** *Translation Of Headnotes*

E Pasukan polis, selepas menerima maklumat berkaitan aktiviti pengedaran dadah, telah pergi ke premis di mana perayu menetap dan menemui dadah dari laci meja tulis di bilik belakang rumah tersebut. Dadah tersebut kemudian disahkan sebagai 1,317.7g kanabis. Perayu, oleh itu, dituduh bagi pengedaran dadah F berbahaya di bawah s. 39B(1) Akta Dadah Berbahaya 1952 ('ADB'). Yang arif hakim mendapati bahawa pihak pendakwaan telah membuktikan milikan dengan membangkitkan anggapan di bawah s. 37(d) ADB dengan membuat inferens bahawa perayu mempunyai jagaan dan kawalan bagi laci yang mengandungi dadah G tersebut. Bersandarkan kepada definisi pengedaran di bawah s. 2 ADB, yang arif hakim seterusnya mendapati bahawa perayu menyimpan dadah tersebut, dengan itu, mengedar dadah dalam maksud s. 2 ADB. Perayu, oleh itu, disabitkan dan dijatuhkan hukuman mati. Dengan itu, perayu merayu terhadap keputusan H tersebut. Perayu menghujah bahawa yang arif hakim tidak membuat dapatan positif milikan dan menyatakan bahawa bilik tersebut boleh dimasuki secara terbuka dan bukan berada dalam domain eksklusif perayu. Dihujahkan juga bahawa SP10, yang telah ditangkap dan sedang menjalani hukuman penjara bagi milikan I kanabis, telah datang ke rumah tersebut dan menggunakan bilik tersebut pada malam sebelum polis menggeledah rumah tersebut.

**Diputuskan (membebaskan dan melepaskan perayu; mengenepikan sabitan dan hukuman Mahkamah Tinggi) Oleh Balia Yusof Wahi HMR menyampaikan penghakiman mahkamah:**

**(1)** Seseorang hakim yang menghakimi sesuatu pertikaian harus menilai dan menimbangkan keterangan di hadapannya dan juga mesti memeriksa secara kritikal keterangan tersebut. Apa-apa keputusan yang dicapai tanpa penilaian kehakiman terhadap keterangan layak untuk pembetulan kehakiman. (*Boonsoom Boonyanit v. Adorna Properties Sdn Bhd*, dirujuk); (*Lee Ing Chin & Ors v. Gan Yook Chin & Anor*, dirujuk).

**(2)** Berdasarkan fakta, yang arif hakim perbicaraan telah gagal menilai dan mempertimbangkan keterangan berkaitan dengan kemungkinan dadah tersebut kepunyaan atau telah diletakkan di situ oleh orang lain. Ini merupakan bahagian penting bagi pembelaan perayu yang tidak dipertimbangkan secara kehakiman dan dengan secukupnya oleh yang arif hakim perbicaraan dan dengan itu, menjadi satu salah arahan yang serius yang mewajarkan campur tangan rayuan. Keterangan bahawa bilik di mana dadah ditemui boleh dimasuki oleh yang lain dan bahawa tiada jagaan dan kawalan eksklusif terhadap laci oleh perayu adalah penting. Kegagalan untuk mempertimbangkan keterangan penting itu menjadikan kesilapan dari segi undang-undang melampaui hujahan.

**(3)** Yang arif hakim perbicaraan juga telah membuat inferens bahawa dadah, yang menjadi perkara pertuduhan bagi milikan terhadap SP10, diambil dari rumah di mana perayu ditangkap. Langsung tiada keterangan untuk menjustifikasi inferens yang dibuat oleh yang arif hakim. Inferens yang tidak memihak itu adalah memprejudiskan kepada perayu dan mewajarkan campur tangan rayuan.

**(4)** Walaupun yang arif hakim perbicaraan telah dengan betul mendapati bahawa laci yang mengandungi dadah yang dipersoalkan menepati definisi "apa-apa yang mengandungi" di bawah s. 37(d) ADB, mahkamah tidak menyetujui pemakaiannya terhadap perayu atas alasan bahawa perayu tidak boleh, atas keterangan yang sedia ada, mempunyai jagaan dan kawalan ekslusif terhadap laci tersebut.

**(5)** Adalah matan bahawa tidak mungkin adanya milikan tanpa pengetahuan. Dalam rayuan ini, milikan telah dianggap di bawah s. 37(d) ADB. Perayu dianggap mempunyai milikan dadah dan boleh, sehingga sebaliknya dibuktikan, dianggap mengetahui sifat dadah tersebut. Maka, tidak ada merit dalam hujahan rayuan ini bahawa tidak terdapat elemen pengetahuan. Juga, pihak yang arif hakim perbicaraan tidak melakukan sebarang kekhilafan dalam mengendalikan isu beban pembuktian yang terletak pada perayu.

**(6)** Adalah tidak selamat untuk mensabitkan perayu atas keterangan yang dikemukakan dan cara yang arif hakim perbicaraan mempertimbangkan keterangan.

**Case(s) referred to:**

*Azizan Yahaya v. PP [2012] 8 CLJ 405 CA* ***(refd)***
*Boonsoom Boonyanit v. Adorna Properties Sdn Bhd [1997] 3 CLJ 17 CA* ***(refd)***
*Chan Pean Leon v. PP [1956] 1 LNS 17 HC* ***(refd)***
*Gotham Construction Co v. Amulya Krishna Ghose And Ors AIR 1968 Cal 91* ***(refd)***
*Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA* ***(refd)***
*Mst Chameli Debi v. Purusattam Singh AIR 1974 Calcutta 316* ***(refd)***
*Saad Ibrahim v. PP [1967] 1 LNS 154 HC* ***(refd)***
*Syed Ali Syed Abdul Hamid & Anor v. PP [1982] CLJ 188; [1982] CLJ (Rep) 340 FC* ***(refd)***
*Ti Chuee Hiang v. PP [1995] 3 CLJ 1 FC* ***(refd)***
*Toh Ah Loh & Mak Thim v. Rex [1948] 1 LNS 72 HC* ***(refd)***
*Tong Peng Hong v. PP [1955] 1 LNS 165 HC* ***(refd)***

**Legislation referred to:**

Criminal Procedure Code, s. 425
Dangerous Drugs Act 1952, ss. 2, 37(d), 39B(1), (2)

*For the appellant - Kamarul Hisham Kamaruddin (Mohd Ruzaini & Leong Pui Yee with him); M/s Kamarul Hisham & Hasnal Rezuan*
*For the respondent - Awang Armadajaya, DPP*

*[Appeal from High Court, Kuala Terengganu; Criminal Trial No: 45A-01-2011]*

*Reported by S Barathi*

## JUDGMENT

**Balia Yusof Wahi JCA:**

### Background

**[1]** The appellant appealed against his conviction and sentence on a charge of trafficking in dangerous drugs, to wit 1,317.7g of cannabis under s. 39B(1) and punishable under s. 39B(2) of the Dangerous Drugs 1952 ('the Act').

**[2]** We heard his appeal at the end of which we unanimously found his conviction to be unsafe which earned him an order of acquittal and discharge. We set aside the order of the High Court and we set him free.

**[3]** We now give our reasons.

**[4]** The brief facts of the case against the appellant condensed from the evidence led by the prosecution started with an information received by the police regarding a drug trafficking activity in the Kampung Tok Jamal, Wakaf Mempelam area in Terengganu. The police swung into action with ('SP4') (ASP Mohd Harazli) and his team going to the suspected premise and found the gate unlocked. He called out the residents of the house but there was no response.

**[5]** After a while, the appellant opened the front door using a key. SP4 observed that the appellant was panicky. SP4 did a body search on the appellant but found nothing. SP4 further asked the appellant whether he has any drugs and the appellant replied that has "a little for personal consumption". SP4 further asked where? And the appellant replied "in the back room" and led SP4 to a room at the back of the house. SP4 asked a further question where the drug is kept and the appellant replied "in the drawer of the writing table". SP4 examined the drawer of the writing table and found three slabs suspected to be ganja. Apart from the three slabs, there were also an insurance policy and a driving licence both in the name of Mohamad b Abdul Rahman found in the drawer. A bag containing the identity card bearing the name Mohamad b Abdul Rahman found on the table was also seized by SP4.

**[6]** A water supply bill in the name of the owner of the house, Razali b Abdullah and a bunch of keys found on a table at the house were also seized.

**[7]** The chemist ('SP6') confirmed that the three slabs contained 1,317.7g cannabis. The evidence of SP4 was corroborated substantially by SP5 who was all the time together with SP4.

**[8]** The learned trial judge ruled a *prima facie* case was established and called upon the appellant to enter his defence.

**[9]** In his defence, the appellant stated that he was sleeping in the master bedroom in the house and on hearing knocks and noises he got up and opened the door. As soon as the door was opened, a few men rushed into the house and introduced themselves as police officers. He was then taken to the room at the back of the house and the police found a packet of drugs in the drawer of a table in the room. He was then handcuffed and taken to the police station.

**[10]** The appellant denied any knowledge about the drugs found. He shared a room in the house together with SP8 who is also a tenant of the house. They occupied the master bedroom. Their friends used to come to the house. A few days before his arrest, his friends Hazri, Along and Din came to the house. In fact, the day before his arrest, Din ('SP10') came to the house and left after he did his "isyak" prayers. SP10 was arrested a day before the appellant's arrest and was charged and convicted for possession of cannabis.

**[11]** The learned trial judge found the appellant's defence to be a mere denial (satu penafian semata-mata) and rejected the defence. The appellant was found guilty and convicted on the charge. He was sentenced to death.

## The Appeal

**[12]** Despite the numerous grounds stated in the petition of appeal, learned counsel for the appellant conceded that those grounds may readily be condensed into four main issues namely:

(i) possession;

(ii) evaluation of evidence;

(iii) section 37(d) presumption; and

(iv) wrong burden of proof.

**[13]** We propose to deal with the issues of possession and s. 37(d) of the Act together. On the issue of possession, the learned trial judge had found that the prosecution had established possession with the invocation of the s. 37(d) presumption. Among the factors that His Lordship had taken into consideration was the fact that personal belongings of the appellant such as the insurance policy and the driving licence were found together with the impugned drugs in the drawer. There was also a wallet containing the identity card of the appellant on a table next to the table from where the drugs were recovered. The learned trial judge had drawn an inference that the appellant had custody and control of the drawer and hence possession of the drugs found therein. Relying on the definition of trafficking under s. 2 of the Act, the learned judge went on to find that the appellant was keeping the drugs, hence trafficking in the same within the meaning of s. 2 of the Act.

**[14]** Learned counsel for the appellant had rightly submitted that the learned trial judge did not make any positive finding of possession. The room marked D in the sketch plan (exh. P26) was normally used for prayers and it was in fact used by SP10 the day before the police raided the house. The room was not locked and it was accessible to all and sundry. The evidence of SP8 and SP10, besides the evidence of the appellant himself established that fact. In other words, it was part of the prosecution's case that the room was readily accessible and was not within the exclusive domain of the appellant. At the time of the raid too, SP4 confirmed that the room was not locked. SP8, the tenant of the house says the room was used "untuk buat kerja dan bilik untuk sembahyang" (see p. 156 rekod rayuan jld 1). Besides, SP8 also kept his A4 paper and his printer in the drawer there. Two other sleeping partners of the appellant, Along and Mohd Roshdi used to come to the house to check the stock of silk used in the appellant's business. In cross-examination, SP8 further confirmed that the appellant's friends too, used the said room although he was not sure whether they ever slept in the room. And upon being put to him that any visitor to the house will use the room instead of the other two rooms, SP8 readily agreed to the suggestion. Corroborating the evidence of SP10, SP8 also stated that SP10 did come to the house and used the room the night before the police raided the said house.

**[15]** SP10 was called by the prosecution after having closed their case. An application by the learned Deputy Public Prosecutor was made under s. 425 of the Criminal Procedure Code and upon hearing submissions from both sides, the learned trial judge had allowed the prosecution's application.

**[16]** In his evidence, SP10 stated that he was arrested on 2 October 2010 after coming out from the appellant's house. He was on his way to town. He had dropped by at the appellant's house to pray and brought some food. At the time of giving evidence, he was serving sentence of imprisonment for possession of cannabis. SP10 said he used to frequent the house to see the appellant and stated that the back room, where the impugned drugs were found was never locked.

**[17]** It was submitted before us that, had the learned trial judge properly considered those evidence, his finding of control and custody of the table and drawer from where the impugned drugs were found would be flawed. To that extent, we agree with the learned counsel's submissions that the learned trial judge had accepted the evidence as a matter of course but has failed to properly evaluate it and assessing it before attaching any weight to such evidence.

**[18]** A judge who adjudicated upon a dispute must assess and weigh the evidence before him and must also critically examine the same. Any decision arrived at in the absence of judicial appreciation of evidence is liable to judicial correction (*Boonsoom Boonyanit v. Adorna Properties Sdn Bhd* [1997] 3 CLJ 17, *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19).

**[19]** While acknowledging that the room is accessible to the appellant's friends and the friends of SP8, the learned trial judge concluded that there was no evidence to suggest that the appellant was framed either by his own friends or that of SP8's friends. As His Lordship had found, the appellant's defence is one of a denial as to any knowledge about the drugs. A frame up by others was never his defence. What the learned trial judge has failed to do was to evaluate and appraise the evidence on the possibility of the drugs to belong to or to have been placed there by others. This is a crucial part of the appellant's defence which His Lordship had failed to judicially and adequately consider. Failure of the learned trial judge to fully appreciate and evaluate the evidence of the witnesses is a serious misdirection, warranting appellate intervention.

**[20]** Taking into consideration the totality of the evidence, we are of the considered view that the learned trial judge had failed to consider that the room where the drugs were found was accessible to others and there was no exclusive custody and control of the drawer by the appellant. Our perusal of the learned trial judge's grounds of judgment did not indicate that His Lordship had made that consideration. In our view, that evidence is material and that failure to consider material evidence does make an error of law beyond argument. (*Gotham Construction Co v. Amulya Krishna Ghose And Ors* AIR 1968 Cal 91).

**[21]** As Sinha J in *Mst Chameli Debi v. Purusattam Singh* AIR 1974 Calcutta 316 at p. 318 said:

> It is well established that failure to consider important evidence or important surrounding circumstances would constitute an error of law and it would be open to this Court in that situation to interfere in second appeal.

**[22]** In *Azizan Yahaya v. PP* [2012] 8 CLJ 405; [2013] 1 MLJ 180 a case quite similar to the instant appeal, this court had ruled that it is the duty of the prosecution to exclude the possibility that other persons could have access to the drawer where the drugs were found. In that case, a police party went to the accused's house very early one morning and after getting the occupants to let them in, the police party searched the main bedroom on the upper floor of the house where the accused and his wife, SP4, slept. The house was also occupied by the couple's three children aged 16, 20 and 24 years. From an unlocked drawer at the headboard of the accused's bed, the police party recovered a plastic bag which contained cannabis. The accused and his wife were arrested and taken to the police station with the seized drugs. SP4 was released after eight days of remand and only the accused was charged with the offence.

**[23]** At p. 413 (CLJ), p. 187 (MLJ) of the report, Aziah Ali JCA, delivering judgment of the court stated:

> We find from the evidence adduced by the prosecution that though the room where the drugs were found was occupied only by the appellant and SP4 but it is pertinent to note that evidence also showed that the room was accessible to all the other occupants in the house. SP4 testifies that she and the appellant occupied the main bedroom and the children occupied the other two rooms. In

A cross-examination SP4 agreed that everybody in the house had access to the room (p 28 appeal record). The room was unlocked. Thus whilst the occupants of the room were the appellant and SP4 both of whom would have had complete access to the room, it is also apparent that their three children too had access to the room.

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**[24]** Continuing at pp. 415-416 (CLJ), p. 189 (MLJ), Her Ladyship said:

The evidence showed that the drawer was closed thus the bag P8 was not visible. There was no evidence that the drawer was locked. The onus was on the prosecution to exclude, at the very least, the possibility of access by other persons to the drawer, if not the room, and that only the appellant and no other person had exclusive access to the drawer by others. We find that the learned judge had failed to consider that the prosecution had failed to exclude the possibility that other individuals could not have access to the drawer.

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**[25]** We find that in the instant appeal the prosecution had failed to discharge that duty. We are reminded of the Federal Court's decision in *Ti Chuee Hiang v. PP* [1995] 3 CLJ 1; [1995] 2 MLJ 433 and wish to reiterate what was stated by Edgar Joseph Jr FCJ at pp. 6-7 (CLJ), p. 440 (MLJ):

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... while the prosecution has a complete discretion as to the choice of witnesses to be called at the trial ... it also has a duty to call all of the necessary witnesses to establish proof against the accused beyond all reasonable doubt, and if, in the exercise of its discretion, it fails to fulfill this obligation, which is nothing less than a statutory duty, the accused must be acquitted.

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G **[26]** Likewise, the appellant in the instant appeal ought to have the benefit of the prosecution's failure.

**[27]** We further observed that the learned trial judge had also made an inference that the drugs ('cannabis') for which SP10 was charged for being in possession, were taken from the house where the appellant was arrested. We agree with learned counsel that there was absolutely no evidence to justify the inference drawn by the learned trial judge. That unfavourable inference is prejudicial to the appellant. It merits appellate intervention.

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**[28]** On the application of s. 37(d), a drawer or a table with a drawer cannot be "anything whatsoever containing" any dangerous drugs. So was the submission of the appellant's learned counsel and reliance was placed on *Syed Ali Syed Abdul Hamid & Anor v. PP* [1982] CLJ 188; [1982] CLJ (Rep) 340; [1982] 1 MLJ 132. The Federal Court in that case held that "a car cannot be said to contain drugs nor could it be said to be a container of drugs although opium was found in it". A B

**[29]** We are unable to agree with learned counsel that the drawer which contained the impugned drugs is not "anything whatsoever containing" within the meaning of s. 37(d) of the Act. We made reference to *Tong Peng Hong v. PP* [1955] 1 LNS 165; [1955] MLJ 232 where Thomson J stated at p. 233: C

> The words "anything whatsoever" by themselves have a wide meaning as any other words can have but that meaning is governed and greatly restricted by the word "containing". A thing containing another thing is not synonymous with a thing in which that other thing is. To take an extreme example, it is not correct to say the earth contains the fly which at the moment is waking up the wall of my Chambers. Both by derivation and by ordinary usage the word "containing" implies some measure of holding or restriction. The jar contains the jam but the cupboard contains the jar. In short, a container is not something in which another thing is. It is something which surrounds or holds another thing so as to prevent that other thing from being elsewhere. D E F

**[30]** In our view, the learned trial judge had rightly found that a drawer containing the impugned drugs fitted the definition of "anything whatsoever containing" dangerous drugs. We can only agree to that part of the learned trial judge's finding but we differ in its invocation against the appellant for the reason that the appellant could not, on the evidence available, be in exclusive control and custody of the drawer. G

**[31]** Still on the issue of possession, learned counsel for the appellant untiringly submitted that possession is not proven because there is not an iota of evidence to suggest that the appellant had any knowledge about the drugs in the drawer. It is trite that there cannot be possession without knowledge. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it (*Saad Ibrahim v. PP* [1967] 1 LNS 154; [1968] 1 MLJ 158, *Chan Pean Leon v. PP* [1956] 1 LNS 17; [1956] MLJ 237, H I

A *Toh Ah Loh & Mak Thim v. Rex* [1948] 1 LNS 72; [1949] MLJ 54). In the instant appeal, possession was presumed under s. 37(d) of the Act. The appellant is deemed to have been in possession of the drugs and shall until the contrary is proved, be deemed to have known the nature of the drug. We do not find
B any merit in the submission of counsel that the element of knowledge is lacking in this appeal.

**[32]** We now come to the final point of the learned counsel's submission that is on the issue of burden of proof placed on the
C appellant. We pause here to note what the learned trial judge had stated on the appellant's defence, and the burden cast on him. At p. 394 of the rekod rayuan jld 2 His Lordship stated:

> Saya merumuskan pembelaan tertuduh adalah satu penafian semata-semata. Tertuduh gagal untuk menimbulkan **keraguan**
D **yang munasabah ke atas pendakwaan** seperti yang diputuskan di dalam kes *Public Prosecutor v. Karim Othman* [1994] 2 CLJ 826, penggantungan kepada bentuk pembelaan yang berupa "bare denial" semata, tidak mencukupi untuk **menangkas di atas prinsip imbangan keberangkalian akan andaian/anggapan** memiliki dan
E dalam kawalan dadah berbahaya serta pengedarannya. (emphasis added)

**[33]** We do not find anything inherently wrong with that conclusion. That paragraph which we have quoted is self explanatory on the burden placed on the appellant and we need
F say no more. We do not see any fault on the part of the learned trial judge in dealing with the issue of burden of proof placed on the appellant.

**[34]** We have considered the submissions of both learned counsel
G for the appellant and learned Deputy Public Prosecutor. We unanimously agree that it is unsafe to convict the appellant on the evidence proffered and the manner in which the learned trial judge had dealt with the evidence. For the said reasons, we allowed the appeal and ordered that the appellant be acquitted and
H discharged. He is set free and the conviction and sentence by the High Court is set aside.

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